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Supreme Court U.S.
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No. 165.

IN THE

Supreme Court of the United States.

THE MARTIN-ALEXANDER LUMBER COMPANY ET AL. ..... *Appellants,*

v.

THE UNITED STATES ..... *Appellee.*

STATEMENT AND BRIEF FOR APPELLANTS.

U. M. ROSE,
G. B. ROSE.

Gazette Printing Company, Little Rock, Ark.

IN THE

Supreme Court of the United States.

THE MARTIN-ALEXANDER LUMBER COMPANY ET AL. ..... *Appellants,*

v. No. 504.

THE UNITED STATES ..... *Appellee.*

STATEMENT AND BRIEF FOR APPELLANTS.

STATEMENT.

This was a suit instituted on behalf of the United States to cancel forty-four patents issued to as many different parties, conveying to the several patentees certain lands belonging to the government under the Timber and Stone Act.

The several entrymen, the Martin-Alexander Lumber Company and the Detroit Timber and Lumber Company were made parties defendant in the bill.

The bill alleged in substance that the lands belonged to the government; that they were subject to entry and that the forty-four entrymen respectively conspired with the Martin-Alexander Lumber Company and its officers to enter the lands and obtain the timber growing thereon for the Martin-Alexander Lumber Company; that in pursuance of said conspiracy the said several parties made the entries under an agreement with the Martin-Alexander Lumber Company to convey to it the timber on said land, and that after the several entries were made the respective entrymen conveyed to the Martin-Alexander Lumber Company the timber standing on his or her land (Tr., 1-14).

An amendment to the bill was filed, which alleged that each of the entrymen entered into an agreement with the Martin-Alexander Lumber Company to the effect that each and every entry made by them respectively should be made for the use and benefit of said Company; or that if no such agreement was made, each and every entryman made his or her entry on speculation and not in good faith (Tr., 66, 67).

The Martin-Alexander Lumber Company filed an answer denying specifically and in detail all the allegations of the bill, in so far as they in any way charged that the entries were made for its benefit; but alleging that so far as it is advised, the entries were all made in good faith by the several entrymen, and that it

acquired from each of them what is commonly known as timber contracts, conveying to it the timber growing on the lands entered; but denies that any entry was procured to be made by its officers, or any of them, or that its officers procured any false or fraudulent affidavits to be made in connection with the entries (Tr., 15, 19).

Each of the cross-appellants, except Sherman L. Garrison and Barbara A. Garrison, filed separate answers, denying all the allegations of the bill charging fraud upon him or her; but in some way they were omitted from the printed record.

In the prosecution against certain officers of the Martin-Alexander Lumber Company, many of the entrymen were produced as witnesses and examined on behalf of the government. The testimony given by them was, by consent of parties, filed as testimony in this cause.

The testimony of other witnesses, including the officers of the Martin-Alexander Lumber Company, was taken on behalf of the government, and the defendants in this cause also took testimony. The case was then finally heard upon the pleadings and proof, and the bill was dismissed by the circuit court (Tr., 428).

The government appealed to the United States Circuit Court of Appeals, where a decree was rendered reversing the decree of the circuit court and remand-

ing the cause, with directions to enter a decree to the effect that the patents issued to seventeen of the entrymen, who are cross-appellants her, be avoided, with costs in favor of the United States, against them and the Martin-Alexander Lumber Company, but in favor of the Detroit Timber and Lumber Company and all entrymen except the seventeen above named (Tr., 455).

The government took an appeal from so much of the decree as was against it (Tr., 456).

Thereupon the seventeen whose several entries were canceled by the decree of the court of appeals and the Martin-Alexander Lumber Company filed their petition for appeal, and on the same day filed their respective assignment of errors and appeal bond (Tr., 464, 467).

The bond was approved and the appeal allowed (Tr., 467, 468).

The Martin-Alexander Lumber Company assigns as error:

1. That the court erred in holding that either of the seventeen entrymen applied to enter the land he or she obtained on speculation for the use or benefit of the Martin-Alexander Lumber Company, and not in good faith to appropriate it to his or her own exclusive benelt.

2. That the court erred in holding that any entryman made his or her entry on speculation for the use

and benefit of the Martin-Alexander Lumber Company.

3. That the court erred in reversing the decree of the circuit court.

4. That the court erred in rendering a decree for costs against the Martin-Alexander Lumber Company; and

5. That the court erred in not rendering a decree affirming the decree of the circuit court (Tr., 465).

The seventeen entrymen made substantially the same assignment of error (Tr., 465, 466).

The circuit court of appeals in effect held that there was no agreement on part of the entrymen to make their entries for the benefit of the Martin-Alexander Lumber Company; but that the said seventeen cross-appellants did make their entries on a speculation, for the use and benefit of that company; and not in good faith to appropriate it to his or her own exclusive benefit.

The contention of the cross-appellants is, that the latter finding of the circuit court of appeals was erroneous and not supported by the evidence; that each of the seventeen entries was made in good faith; that each of them should be sustained, and that no decree for costs should have been directed against either of the entrymen or the Martin-Alexander Lumber Company.

The brief filed on part of the appellees on the main appeal contains an abstract of the record, in so far as it bears upon the positions here taken, and also a complete argument upon the questions involved. As the cases are heard together, we deem it unnecessary to repeat in this brief what has been incorporated in that; but beg leave to refer to it, and ask the court to consider it as if filed on the cross-appeal.

Respectfully submitted,

U. M. ROSE,

G. B. ROSE.